

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILFRED LABOSSIERE,

Plaintiff,

-against-

MONTEFIORE (MOUNT VERNON) POST
SURGERY STAFF JOHN/JANE DOE 6/28/19,
et al.,

Defendants.

21-CV-10541 (CS)

ORDER OF SERVICE

CATHY SEIBEL, United States District Judge:

On August 9, 2022, I directed the U.S. Marshals Service to serve Defendant Brian Coto at Fishkill Correctional Facility in Beacon, New York. (ECF No. 27.) The Clerk of Court erroneously filled out a Form USM-285 for Downstate Correctional Facility in Fishkill, New York, and, unsurprisingly, the Marshals were unable to serve him there. (ECF No. 37.) On October 19, 2022, Assistant Attorney General Shevlin brought the error to the Court's attention, (ECF No. 38), and on December 15, 2022 I ordered the Marshals to serve Defendant Coto at Fishkill Correctional Facility, (ECF No. 46). No receipt and return of service was filed by the Marshals. Upon recent inquiry my chambers was informed that the Marshals were unable to locate Defendant Coto to effect service. I therefore ordered Mr. Shevlin to update the Court as to where Defendant Coto may be served. (ECF No. 64.) Today he advised the Defendant Coto is still employed at Fishkill Correctional Facility. (ECF No. 65.) I do not know why the Marshals' effort to serve Defendant Coto there was unsuccessful last time, but unfortunately they will need to try again.

To permit service on Defendant Coto through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-

285 form”) for that Defendant. The Clerk of Court is further instructed to issue a new summons to Defendant Coto and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service of the summons and Third Amended Complaint (ECF No. 48) upon Defendant Coto.

The Court extends the time for service to April 13, 2024. If the SAC is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App’x 50, 52 (2d Cir. 2010) (“As long as the [plaintiff proceeding *in forma pauperis*] provides the information necessary to identify the defendant, the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of [Federal Rule of Civil Procedure 4(m).”).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is instructed to issue a new summons for Defendant Coto, complete a USM-285 form with the address for Defendant Coto, and deliver to the U.S. Marshals Service all documents necessary to effect service on Defendant Coto.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal.

SO ORDERED.

Dated: February 12, 2024
White Plains, New York



CATHY SEIBEL
United States District Judge

DEFENDANT AND SERVICE ADDRESSES

1. Officer Brian Coto
Fishkill Correctional Facility
18 Strack Drive
Beacon, NY 12508